

KAUFMAN et al
Appl. No. 10/080,522
August 8, 2005

REMARKS/ARGUMENTS

Reconsideration of this application and entry of the foregoing amendments are respectfully requested.

On page 2 of the Action, the Examiner again requests revision of the title. The Examiner's attention is directed to page 2 of the February 22, 2005 Amendment where that revision was made.

Claim 33 and claims depending therefrom have been revised to delete the reference to "mammalian K12 protein". Method claim 28 has been amended to parallel the language of revised claim 33. When claim 33 is found to be allowable, the Examiner is again requested to rejoin and allow claim 28.

Claims 33, 40 and 41 stand rejected under 35 USC 112, first paragraph, as allegedly lacking written description. Withdrawal of the rejection is submitted to be in order in view of the above-noted claim revisions.

As noted above, the claims have been revised to delete the reference to "K12". The claims as presently presented are therefore drawn to an antibody, or binding fragment thereof, specific for the protein defined in the claims of the parent case (now USP 6,072,034).

The Patent Office has found the claims of the parent to be enabled, therefore, there is no reason why that same language should not be enabled here. The present case is a continuation application and thus the disclosure of this case and the parent are identical.

KAUFMAN et al
Appl. No. 10/080,522
August 8, 2005

In this regard, the Examiner is reminded that an issued patent is presumed valid under 35 USC 282.

While nothing further should be necessary, the Examiner's attention is directed to the fact that In re Giolito and Ex parte Balzarini relate to situations distinct from that at hand. In Giolito and in Balzarini, different applicants and thus different disclosures were involved. Here, the same disclosure (i.e. the disclosure of the parent case) was found to enable a protein as defined in the instant claims. This is not a case of an unrelated disclosure, it is Applicant's own disclosure that the PTO has previously acknowledged to be enabling.

In view of the above, reconsideration is requested.

This application is submitted to be in condition for allowance and a Notice to that effect is requested.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: Mary J. Wilson
Mary J. Wilson
Reg. No. 32,955

MJW:tat
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714
Telephone: (703) 816-4000
Facsimile: (703) 816-4100